

**EUFROCIO BERMISO, ET AL., PETITIONERS, VS. HUOS DE F. ESCAÑO, INC., ET AL., RESPONDENTS.***G. R. No. 11606. February 28, 1959*

Ponente: LABRADOR, J.

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Petitioners originally numbering 45 and formerly composing the Democratic Labor Association and the Katubsanang sa Mamumuo instituted this action before the Court of Industrial Relations on August 5, 1952, praying for reinstatement with back wages, direct payment of wages to the laborers instead of through the union, payment of accrued overtime pay and wage differentials, prohibition from carrying load in excess of 50 kilos, minimum daily wage of P5.00, vacation and sick leave, free hospitalization, accident insurance, free choice of labor union and grievance committee. Of the original petitioners only five continued to take interest in the action, the others having desisted therefrom. After hearing the Court of Industrial Relations ordered the reinstatement of the said five laborers to their former work and positions in the Sabay group, but without back wages, but dismissed the other claims. Not satisfied with this decision the five remaining petitioners have filed this appeal by a petition for certiorari.

The Court of Industrial Relations made the following findings as to the manner in which the union or group to which the petitioners belong operate;

"The Hijos de F. Escaño, Inc., hereafter referred to as Escaño or Company, is a domestic corporation engaged in the business of carrying or transporting passengers and goods by water for compensation within the Philippines \* \* \*.

"The Katubsanang sa Mamumuo, hereafter called the Union or simply Katubsanang, is a labor organization duly registered with the Department of Labor and with office address in Cebu City it is composed mainly of laborers from the Visayas and Mindanao and has respondent Jose Muana and Vitaliano Sabay as its general president and general treasurer, respectively. Its members in Cebu are numerous and divided into several groups, sometimes called chapters. One of them is headed by respondent Sabay as its foreman or "Cabo" and known as the Sabay group. To this group, in which there are no less than 150 men, formerly belonged some or all of the 45 petitioners.

"The Sabay group was organized in 1947. Its members generally perform work similar to that done by laborers of stevedoring and arrastre firms. They load and unload vessels in the port of Cebu and haul or transport discharged cargo from the waterfront to the consignees' warehouses as well as cargo to be shipped out of

"One of the carriers for whom the Sabay men regularly serve as stevedores is the Escano. Their relation had its inception in 1947 when, through the representations made by Muana and Sabay, Salvador Sala, general manager of said carrier, permitted the Sabay group to do the work of loading and unloading its vessels to the exclusion of all other persons. From the beginning the Company has not directly paid Muana, Sabay or the group any compensation for the loading or unloading services rendered by Sabay men. Neither has it received any payment for the exclusive privilege enjoyed by the group. The practice which they have continuously

followed is that the group collects from the shippers and consignees the charges for the handling of the cargo based on a schedule of rates which appears to have been previously approved by all the parties affected by the work, while the Company receives or collects from the shippers or consignees only the freightage for the cargo.

"Aside from Sabay, the group has a collector, a timekeeper, a paymaster, and several capataces and subcapataces. The first three assist Sabay in the collection of the handling fees from the shippers and consignees, the recording of names of members taking part in the work and their working hours, and the payment to them of their respective shares in the earnings of the group. The capataces and sub-capataces help him in supervising the men. During the loading and unloading of the Escaño boats, however, the shipping manager of the Company, who is usually present, calls their attention to their work. Furthermore, its checkers aid the men in determining which cargo to load or unload. And whenever expedient or necessary to finish the work immediately, they are allowed to use the different modern apparatuses of the vessels for the raising and loading of cargo. In the hauling of the cargo, checkers or agents of the shippers and consignees accompany them and look over their work.

"Generally, only Sabay men are permitted to take part in this work. But when it is voluminous, the group, to avoid delay, enlists the services of non-members. These recruits are treated as casual laborers and paid on daily basis.

"The amount collected from the shippers and consignees is considered as the gross income of the group. From this income are deducted its expenses if any, for gasoline and spare parts of trucks used, damage to, loss or destruction of, cargo not imputable to any particular individual or individuals, meals, recreation, wages of casual workers, and an amount equivalent to two per centum for the Katubsanan for the maintenance of the union clinic and newspaper. The net income is then divided into equal shares in accordance with the sharing plan under which each common laborer is entitled to one share and the rest, including the sub-capataces, capataces, Sabay and the other officers of the group, to one and one-fourth, one and one-half, one and three-fourths, two, three, or more each, depending on the length of membership and importance of the position held in the group. This division of the group's income is done every Saturday and the shares received by the participating members constitute their wages for the week.

"Before the Minimum Wage Law (R. A. No. 602) went into effect, the number of hours each laborer worked was not taken into account by the group. Even members who did not actually render any service were given shares if their failure to work was found to have been due to a reasonable cause. Certain records were made of the disposition of the group's income but they, together with some payrolls, were destroyed by water<sup>1</sup> when Cebu was visited by a strong typhoon in 1951. After August 4, 1951, the share was given a fixed value: P0.39, at first, P0.40, later, and, finally, P0.50 per hour of work or service. Under this modified plan, if the computation would result in wages falling short of the legal minimum because there were many laborers who worked, the group collected additional charges from the shippers and consignees. If further payment was refused for the reason that the work was delayed by the workers, the group covered the deficit from its so-called sinking fund which was accumulated from the small undivided or indivisible amounts remaining after each distribution of net income. At times the laborers were rotated to obviate the possibility of wage shortage. As regards the expenses, whether or not they were deductible from the gross earnings was looked into by the auditor-bookkeeper employed by the Katubsanan. Since the modification of the sharing plan was made, the group has been using payrolls printed in the name of the union."

The court held that insofar as the stevedores loading and unloading its vessels are concerned, the Hijos de F. Escaño is an employer of the petitioners. With respect, however, to the arrastre service, it held that the question is beyond the scope of the relationship between it and the petitioners.

After a review of the testimonies given by the petitioners and those given on behalf of the respondents, the court below also found that the claimants failed to establish any reasonable basis for all their claims except that for their

reinstatement and, therefore, denied them for lack of merit. Claims for overtime pay, wage differentials, maximum load of 50 kilos, minimum wage of P5.00 a day were dismissed. So were the claims for vacation and sick leave, free hospitalization, accident insurance, and free choice of labor union and grievance committee, as the latter were not touched upon by the petitioners in the presentation of their evidence, and that at any rate they should be the subject of collective bargaining under the Industrial Peace Act. As to the reinstatement of the 5 petitioners, namely, of Eufrocio Bermiso, Fortunato Geteso, Constancio Olaco, Laureano Amistoso and Vicente Tuyogan, to their former work and positions in the Sabay group; their claims for back wages were denied. With respect to the direct payment of wages to the laborers, the court found that there was no reason for changing the practice of apportioning the wages for their joint labor and sharing therein, because of the 150 members only 5 were dissatisfied.

Petitioners argue before us that the decision violates the law on direct payment of wages. The law relied upon by them is Section 10, par. (b) of Republic Act No. 602, which provides as follows:

"Sec. 10. (b) Wages, including wages which may be paid retroactively for whatever reason, shall be paid directly to the employee to whom they are due, except:

- (1) In cases where the employee is insured with his consent by the employer, the latter shall be entitled to deduct from the wage of the employee the amount paid by the employer for premiums on the insurance;
- (2) In cases of force majeure rendering such payments impossible; and
- (3) In cases where the right of the employee or his union to check-off has been recognized by the employer or authorized in writing by the individual employees concerned."

There is no question that the work of stevedoring was undertaken by the laborers, not in their individual capacities, but as a group. The contract to perform the service was made by the leader of the group, for and on behalf of the latter, not for each and every one of them individually. For the sake of convenience it was necessary that the group must be large enough to be able to perform the task of loading and unloading in as short time as possible.

As the group undertook to render service for vessels other than those of the Hijos de F. Escaño, it was absolutely necessary that some sort of leadership be instituted in the group to determine which of the members will work for one vessel and which for another. Leadership is also essential to obtain work for the group as employers naturally prefer to deal with a leader of a group than with each member individually. Leadership was, therefore, essential not only to secure work for the group but to arrange the laborers who are to perform the service. The leadership must be paid for and it was not shown that the head of the groups got the lion's share of the cost of the services rendered. Under the circumstances we are not prepared to say that the provision of law on direct payment of wages has been violated. The lower court did not find sufficient evidence to show that racketeering was employed by the leaders. If any existed the remedy can not be found in this court; it is for the group to organize into a closely knitted union which would secure the privileges that the members desire thru the selection of officers among themselves who would not exploit them.

Lastly, the respondent Hijos de F. Escaño did not pay for the stevedoring charges. These were collected by the group from the shippers themselves, without the intervention of the respondent Escaño. How can the court order the latter to pay the charges to the group or its members, when the charges were collected by the latter from the shippers, in accordance with the practice of the group itself?

We also find no ground for requiring the respondent Hijos de F. Escano to pay back wages. The latter respondent did not deal with the petitioners individually, entering into a contract of employment with them. Said respondent

dealt with the group thru its leaders. If the group, thru its leaders, did not allow the petitioners to work and share in the price paid therefor, the one responsible is not the respondent Escaño but the leader thru whom the group itself made the contract for work and apportioned the time of work for each member and the pay therefor. Again as stated above, the remedy must be sought not in the tribunals of the country but in the laborers themselves who should organized and thru such organization as they may establish, as envisioned by the Industrial Peace Act, secure the privileges demanded.

The third error attributed to the court below is its denial of the other claims, such as vacation and sick leave, accident, insurance, free hospitalization, etc. We agree with the court below that these matters must also be sought for thru labor organizations, which should take them up with their employers thru collective bargaining.

The decision subject of review is hereby affirmed. Without costs.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angela, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

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